IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5278 OF 2005

Ravikiran V. Natekar).. Petitioner

Versus

Devchand G. Shah).. Respondent

Smt.B.P. Jakhade for the Petitioner.

Mr.H.J. Thakkar i/b. Mr.Shah for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 29TH AUGUST 2005

P.C.:

. This Petition has been filed against the concurrent findings of fact of the trial Court and the appellate Court. Both the Courts below have found that the Respondent landlord requires the suit premises bona fide and reasonably. It is also found that the suit premises are not in use for a period of six months and, therefore, the Suit has been decreed.

2. The contention raised in the Writ Petition is that there was no cause of action existing when the Suit was filed by the Respondent. It is submitted on behalf of the Petitioner that the Respondent had filed a Suit in the City Civil Court being Suit No. 6140 of 1970 which has been dismissed on 10th December 1982 for non-prosecution. In that Suit, the Respondent has contended that the Petitioner was a trespasser in the suit premises. At the same time, a Suit was filed in the

Small Causes Court contending that the Petitioner was a tenant and that the tenant had lost the protection available under the Bombay Rent Act and was therefore liable to be evicted under the provisions of Sections 13(1)(g) and 13(1)(k) of the Act. It is submitted that in such a situation when the Respondent elected not to prosecute the Suit before the City Civil Court, there is no cause of action in the Suit filed before the Small Causes Court.

3. In my view, this submission is without any merit. The Respondent having elected to prosecute only the Suit filed before the Small Causes Court, it could not be said that there was no cause of action existing in the Suit before the Small Causes Court. Furthermore, the Petitioner himself has contended that there was a contractual tenancy and, therefore, there is no reason to accept the submission of the Petitioner. Both the Appellate Court and the trial Court have considered the submission of the Petitioner before the Court, that in view of the dismissal or withdrawal of the Suit before the City Civil Court, the Suit before the Small Causes Court was barred by res judicata and have negatived it. In my view, there are no infirmities in the orders of both the Courts below. Concurrent findings of fact have been arrived at and I see no reason to interfere. Hence, Writ Petition rejected.

4. Since the decree is already executed, there is no

question of granting the Petitioner any time to vacate.